

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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THOMAS JOHN HEYDEN,

Plaintiff,

v.

BILL FERGUSON, *et al.*,

Defendants.

Case No. 3:24-cv-00452-MMD-CSD

ORDER

Plaintiff Thomas John Heyden brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that she<sup>1</sup> claims she suffered while incarcerated. (ECF No. 1-1.) On October 7, 2024, this Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full \$405 filing fee on or before December 4, 2024. (ECF No. 3.) The Court warned Plaintiff that the action could be dismissed if she failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$405 filing fee for a civil action by that deadline. (*Id.* at 2.) That deadline expired and Plaintiff did not file a fully complete application to proceed *in forma pauperis*, pay the full \$405 filing fee, or otherwise respond.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.

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<sup>1</sup>In the Complaint, Plaintiff states she is a transgender woman. (ECF No. 1-1.)

1 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to  
2 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th  
3 Cir. 1987) (affirming dismissal for failure to comply with court order). In determining  
4 whether to dismiss an action on one of these grounds, the Court must consider: (1) the  
5 public's interest in expeditious resolution of litigation; (2) the Court's need to manage its  
6 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition  
7 of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*  
8 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
9 *Malone*, 833 F.2d at 130).

10 The first two factors, the public's interest in expeditiously resolving this litigation  
11 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's  
12 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
13 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
14 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542  
15 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
16 cases on their merits—is greatly outweighed by the factors favoring dismissal.

17 The fifth factor requires the Court to consider whether less drastic alternatives can  
18 be used to correct the party's failure that brought about the Court's need to consider  
19 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
20 that considering less drastic alternatives *before* the party has disobeyed a court order  
21 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
22 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that  
23 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's  
24 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled  
25 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).  
26 Courts “need not exhaust every sanction short of dismissal before finally dismissing a  
27 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779  
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1 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and  
2 unless Plaintiff either files a fully complete application to proceed *in forma pauperis* or  
3 pays the \$405 filing fee for a civil action, the only alternative is to enter a second order  
4 setting another deadline. But the reality of repeating an ignored order is that it often only  
5 delays the inevitable and squanders the Court's finite resources. Additionally, Plaintiff's  
6 mail is being returned as undeliverable because she failed to file an updated address with  
7 the Court. (See ECF Nos. 4, 5.) Setting another deadline is not a meaningful alternative  
8 given these circumstances. So the fifth factor favors dismissal.

9 Having thoroughly considered these dismissal factors, the Court finds that they  
10 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without  
11 prejudice based on Plaintiff's failure to file a fully complete application to proceed *in forma*  
12 *pauperis* or pay the full \$405 filing fee in compliance with this Court's October 7, 2024,  
13 order. The Clerk of Court is directed to enter judgment accordingly and close this case.  
14 No other documents may be filed in this now-closed case. If Plaintiff wishes to pursue her  
15 claims, she must file a complaint in a new case and satisfy the matter of the filing fee.

16 DATED THIS 11<sup>th</sup> Day of December 2024.

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20 MIRANDA M. DU  
21 UNITED STATES DISTRICT JUDGE  
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